

# Town of Scituate

ZONING BOARD OF APPEALS

600 CHIEF JUSTICE CUSHING WAY  
SCITUATE, MASSACHUSETTS 02066  
(781) 545-8716



2011 SEP 14 A 10:34

Decision of the Scituate Zoning Board of Appeals on the application of David J. Henry and Evelyn V. Henry of 8 Gannett Road, Scituate, Massachusetts 02066 (hereinafter referred to as the "Applicants") for a finding under MGL 40A § 6 and a special permit to allow the reconstruction of the pre-existing nonconforming single family dwelling known as and numbered 8 Gannett Road, Scituate Massachusetts.

The application was received, advertised and a public hearing was duly held on August 18, 2011 with the following members of the Zoning Board of Appeals hearing the application:

Peter Morin, Chairman  
John Hallin  
Sara J. Trezise

The property that is the subject matter of this application is located in the R-3 Residential District. The property does not lie in the Town of Scituate Flood Plain and Watershed Protection District and does not lie within the Town of Scituate Water Resource Protection Zoning District. The property lies in ZONE X as shown on FIRM Map Community Panel #250282 0001 E, dated October 16, 2003. The property is currently serviced, and will continue to be serviced by a private on site septic system and the public water supply.

At the time of the application, title to the premises was in the name of David J. Henry and Evelyn V. Henry, Husband and Wife, as Tenants by the Entirety by way of a deed recorded the Plymouth County Registry of Deeds in Book 26808 Page 321.

The premises contain 16,113 square feet of land and contain 100.00 feet of frontage along Gannett Road, a public way. The R-3 Residential District requires 10,000 square feet lot area and 100 feet of frontage. The setback requirements in the R-3 Residential District require thirty (30) feet front setback, eight (8) feet side setbacks and rear setback of twenty (20) feet for a dwelling.

The Assessor's field cards state that two single family dwellings located upon the lot were built in 1910. The dwelling known as and numbered 8 Gannett Road, which is the subject matter of the Application, meets all front, rear and side yard set back requirements. The smaller single family dwelling, 8A Gannet Road, is not part of the Application.

Both dwellings and the lot are therefore pre-existing and nonconforming as Section 430.1 of the Bylaw requires not more than one dwelling on any lot, and this property contains two dwellings.

Paul J. Mirabito of Ross Engineering Company, Inc. of Norwell, Massachusetts represented the Applicants at the August 18, 2011 public hearing. At that time, the Board reviewed with the Applicant the site plan submitted and drawn by Ross Engineering Company, Inc, 683 Main Street, Norwell, Massachusetts, dated July 28, 2011. The plans call for the razing and reconstructing the existing dwelling known as and numbered 8 Gannett Road with an increase in size of less than twenty (20.00%) percent. While it will meet all front, rear and side setback requirements, the resulting lot, as described below, contains 84.9 feet of frontage and the reconstructed dwelling will not meet lot width thru the dwelling requirements of the Bylaw. There is no proposed change to the dwelling known as and numbered 8A Gannett Road.

During the course of the public hearing, the Board discussed the fact that Section 610.4 of the Bylaw allows, pursuant to the Subdivision Control Law, M.G.L. Ch. 41, Section 81 K/L, the division of a lot upon which two or more dwelling were standing when the Subdivision Control Law went into effect in the Town of Scituate into separate lots, on each of which one such dwelling remains standing even if said division results in nonconforming setbacks for one or more of the existing dwellings. The Applicants received Planning Board approval for said subdivision of the property pursuant to the above described site plan which approval was filed with the Town Clerk on August 12, 2011. Said plan created two lots, Lot 1, containing 12,392 square feet, which is the subject matter of the Application, and Lot 2, containing 3,675 square feet with each lot containing one dwelling thereon.

No one present at the Public Hearing spoke in opposition of the proposal.

Based upon the evidence presented, the Board finds that both the lot and both existing single family dwellings, known as and numbered 8 and 8A Gannett Road pre-exist the adoption of subdivision control in Scituate and are nonconforming to the Bylaw. The Applicants' proposed razing of the single family dwelling known as and numbered 8 Gannett Road Avenue and its reconstruction is a reconstruction pursuant to the provisions of MGL c. 40A § 6. The Board further finds that the proposal does not increase the nonconforming nature of the existing single family dwelling and is not substantially more detrimental to the neighborhood than the existing nonconformity.

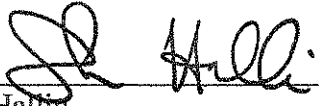
Pursuant to Section 950.3 of the Bylaw, the lot is appropriate for a single family dwelling. The use of the reconstructed dwelling should not adversely affect the neighborhood, nor create any undue nuisance or hazard to vehicles or pedestrians. The town's Board of Health and the Building Commissioner will ensure that appropriate facilities are provided to assure the proper operation of the single family dwelling. The proposed use of dwelling will not have a significant impact on any public or private water supply, and the property is not located within the Water Resource Protection District. There will not be any significant or cumulative impact upon municipal water supplies as the property is serviced by the private sewer system. In addition, the Board finds that the use reflects the nature and purpose of the use prevailing when the bylaw took effect, that

there is no difference in the quality or character, as well as the degree of use, and the proposed use is not different in kind in its effect on the neighborhood.

For the foregoing reasons, the Board unanimously voted to GRANT the Applicants' request for a finding under MGL Chapter 40A § 6 and for a Special Permit to allow the reconstruction of the single family dwelling.

ZONING BOARD OF APPEALS

  
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Peter Morin, Chairman

  
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John Hallin

  
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Sara J. Trezise

Filed with the Town Clerk on: September 14, 2011.

This Special Permit will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County Registry of Deeds after the appeal period of twenty (20) days.

Appeal of any decision of the Zoning Board of Appeals may be made pursuant to M.G.L. Chapter 40, Section 17, and shall be filed within twenty (20) days of the date of the filing of the decision with the Town Clerk.